

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of

Implementation of Section 621(a)(1) of the Cable
Communications Policy Act of 1984 as amended
05-311 by the Cable Television Consumer Protection and
Competition Act of 1992

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MB Docket No

**COMMENTS OF
THE CITY OF HOPKINSVILLE, KENTUCKY
IN RESPONSE TO THE FURTHER NOTICE
OF PROPOSED RULEMAKING**

The City of Hopkinsville, Kentucky submits these comments in response to the Further Notice of Proposed Rulemaking, released March 5, 2007, in the above-captioned rulemaking (“Further Notice”).

1. The City of Hopkinsville, Kentucky (“City”) has two cable television providers—NewWave Communications and Mediacom communications. Both franchises will expire in 2017.

2 We support and adopt the comments of the National Association of Telecommunications Officers and Advisors, the National League of Cities, the National Association of Counties, the U S Conference of Mayors, the Alliance for Community

Media, and the Alliance for Communications Democracy, filed in response to the Further Notice

3. We oppose the Further Notice's tentative conclusion (at ¶ 140) that the findings made in the FCC's March 5, 2007 Order in this proceeding should apply to incumbent cable operators, whether at the time of renewal of those operators' current franchises, or thereafter. This proceeding is based on Section 621(a)(1) of the Communications Act, 47 U.S.C. § 541(a)(1), and the rulings adopted in the Order are specifically, and entirely, directed at "facilitat[ing] and expedit[ing] entry of new cable competitors into the market for the delivery of video programming, and accelerat[ing] broadband deployment" (Order at ¶ 1)

4. We disagree with the rulings in the Order, both on the grounds that the FCC lacks the legal authority to adopt them and on the grounds that those rulings are unnecessary to promote competition. Further, rulings in the Order violate the Cable Act's goal of ensuring that a cable system is "responsive to the needs and interests of the local community," 47 U.S.C. § 521(2), and are in conflict with several other provisions of the Cable Act. But even assuming for the sake of argument the rulings in the Order are valid, they cannot, and should not, be applied to incumbent cable operators. By its terms, the "unreasonable refusal" provisions of Section 621(a)(1) apply to "additional competitive franchise[s]," not to incumbent cable operators. Those operators are by definition already in the market, and their future franchise terms and conditions are

governed by the franchise renewal provisions of Section 626 (47 U.S.C. § 546), and not Section 621(a)(1).

5. Of particular concern to the City are the time limits that the FCC's new rules place on franchise negotiations. Under the new rules, a local franchising authority ("LFA") has 90 days to act if "the applicant has existing authority to access public rights-of-way", 180 days otherwise.

6. The FCC's 90-day/180-day "shot clock" will make it impossible for LFAs in Kentucky to negotiate franchises. Sections 163 and 164 of the Kentucky Constitution provide that before granting a franchise for cable or telephone service, a city must first, after due advertising, receive bids therefore publicly. KRS 424.130(1)(b) provides that bids must be advertised not less than seven (7) days before the bid opening occurs.


7. Therefore, in Kentucky, not only are cities required to pass a franchise ordinance, they are also required take bids on the franchise and grant said franchise by ordinance. Please note that Kentucky law requires that ordinances receive two "readings" at two separate city council meetings'. The City only has meetings twice a month. Additionally, Kentucky law provides that no ordinance shall be effective until published.' Thus, there is additional time required by the publishing requirement. Clearly, the ninety (90) day rule would not even give the City time to comply with state law, let alone enter into meaningful negotiations.

¹ KRS 83A.060 (4)

² KRS 83A.060 (9)

8. We strongly endorse the Further Notice’s tentative conclusion (at ¶ 142) that Section 632(d)(2) (47 U.S.C. § 552(d)(2)) bars the FCC from “preempt[ing] state or local customer service laws that exceed the Commission’s standards,” and from “preventing LFAs and cable operators from agreeing to more stringent [customer service] standards” than the FCC.

City of Hopkinsville, Kentucky

By: 
Mayor J. Daniel Kemp
101 North Main Street
Hopkinsville, KY 42240
(270) 890-0200

cc: NATOA, info@natoa.org
Holly Saurer, Holly.Saurer@fcc.gov
Brendan Murray, Brendan.Murray62fcc.gov